Filed 8/11/15 In re Brooklyn W. CA1/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re BROOKLYN W. et al., Persons Coming Under the Juvenile Court Law.	
SOLANO COUNTY HEALTH AND HUMAN SERVICES DEPARTMENT, Plaintiff and Respondent, v. Tiffany S., Objector and Appellant.	A142728 (Solano County Super. Ct. No. J40952)

Tiffany S. appeals from the order of the Solano Juvenile Court declaring her three minor children dependents. The oldest and the youngest children were placed with the Solano County Health and Human Services Department (Department) for possible return to appellant's custody; the middle child, Brooklyn, was placed in foster care. Appellant's sole claim of error is that when the court found that reasonable efforts had been made by the Department to prevent the removal of Brooklyn from her mother's custody, the court "failed to state on the record at the June 13, 2014 hearing, or in its June 23, 2014 written findings and orders, what evidence supported this finding" as required by Welfare and Institutions Code section 361, subdivision (d).

The context of appellant's claim is quickly established:

" 'After the juvenile court finds a child to be within its jurisdiction, the court must conduct a dispositional hearing' " to " 'decide where the child will live while under the court's supervision.' " (*In re A.S.* (2011) 202 Cal.App.4th 237, 247.) The court cannot order the child removed from parental custody unless it "finds clear and convincing evidence . . . [¶] [t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . custody." (Welf. & Inst. Code, § 361, subd. (c)(1).) As part of the removal decision, "[t]he court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home . . . . The court shall state the facts on which the decision to remove the minor is based." (Welf. & Inst. Code, § 361, subd. (d); see Cal. Rules of Court, rule 5.695(f)(1) ["If the child is removed, the court must consider and determine whether the social worker has exercised due diligence . . . . The court must document its determination by making a finding on the record."].)

June 13, 2014 was the time set for a combined jurisdictional and dispositional hearing before visiting Judge Arvid Johnson. Judge Johnson amended and then sustained these two allegations:

"The mother, Tiffany S[.], has a history of mental health needs that periodically impair her ability to meet the needs of her children . . . , as evidenced by the mother's lack of supervision of the children, the children's poor school attendance, and the mother's inaccurate reporting of Brooklyn's mental health status. All three minors were made dependents of the Juvenile Court on 10/11/2011 and Ms. S[.] received court ordered services designed to address the aforementioned issues from 10/11/2011 through 04/05/2012. Despite receiving said services, these same issues currently persist. Ms. S[.] continues inaccurate reporting of Brooklyn's mental health status; wanting Brooklyn to remain hospitalized for an extended amount of time despite medical professionals indicating that she does not need to be, and the children continue to have poor school attendance, having missed the majority of the current school year. Ms. S[.] also

continues a lack of supervision of her children as evidenced by allowing Asia and Brooklyn to be home alone despite Brooklyn making threats to kill Asia. Such actions by the mother place the children . . . at substantial risk of physical harm or illness."

"Subsequent to Brooklyn being placed on a 5150 hold on 04/01/2014, Ms. S[.] refused to pick up Brooklyn from Mental Health Crisis upon her discharge date, and did not make alternate arrangements for the child's care. Such behavior by the mother places the child . . . at substantial risk of physical harm or illness."

Judge Johnson had before him the caseworker's report recommended that "Ms. S[.] receive Family Reunification services for Brooklyn and that Brooklyn continue to receive mental health needs in out of home care," and that the court adopt "the attached recommended Findings and Orders." Counsel for the Department told the court "I'll have to submit new Findings and Orders for the Court . . . because of the substantial changes that have occurred in reaching the resolution." After sustaining the amended allegations, Judge Johnson then stated:

"[T]he Court has read the jurisdiction-disposition reports [one for each child] that were filed, and because of all the people involved, and since I'm not going to be here next week, may I suggest that you prepare a new proposed findings for the jurisdiction and disposition, send copies to counsel, and if there's any objection to any of that, that cannot be resolved with the Department, . . . file an objection, and I won't sign anything until I get back. That way, if something comes up, let me know, and we'll deal with it when I get back. Otherwise, if you prepare it, and everybody's got a copy, and nobody objects, then I'll sign those. That's kind of short-circuiting everything. [¶] Is that a plan that works?" No one objected.

The next thing shown by the record are the written findings and orders signed by Judge Johnson and filed on June 23, 2014. Included is a Judicial Council form titled "Dispositional Attachment: Removal From Custodial Parent—Placement With Nonparent." With a little allowance for editing, the checked boxes on the form read: "There is clear and convincing evidence of the circumstances stated in Welf. and Inst. Code, § 361 regarding the person specified below: Mother 361(c)(1). [¶] Based on the

facts stated on the record, continuance in the home is contrary to the child's welfare and physical custody is removed from the Mother. [¶] The county agency has made diligent efforts to identify, locate, and contact the child's relatives. [¶] The care, custody, control, and conduct of the child is under the supervision of the county agency for placement in the approved home of a relative, in the approved home of a nonrelative extended family member, with a foster family agency for placement in a foster family home. [¶] The child's out-of-home placement is necessary." There is no reporter's transcript for this date.

It thus appears that the normal procedures were not followed here. This is not to say that the deviation was unwarranted, given the slightly unusual circumstances. And the deviation certainly drew no protest from appellant. So the record has the necessary findings, but it does not have the supporting facts stated on the record. The only true issue is whether this omission must be treated as prejudicial.

Appellant reads *In re Ashly F*. (2014) 225 Cal.App.4th 803, as holding such a "finding could not be implied from the record," and thus is automatically reversible. "[T]o prevail on appeal, a parent is not required to show prejudice, merely that the juvenile court failed to make the requisite expression of the factual basis for its findings." Appellant also sees this as error and irremediable even on remand, as evidenced by her request that reversal be accompanied by "an order that Brooklyn be returned to her home forthwith."

We do not agree with this reading. On the contrary, the Court of Appeal in *Ashly F*. was obviously using the familiar constitutional formula for reversible state error. (*In re Ashly F*., *supra*, 225 Cal.App.4th 803, 811 ["On the record in this case there is a reasonable probability that had the juvenile court inquired into the basis for the claims by [the local welfare agency] that despite its efforts there were no reasonable means of protecting the children except to remove them from their home the court would have found that claim was not supported by clear and convincing evidence."].) This is the established practice—a failure to state the facts supporting the removal decision will be treated as harmless if there is substantial evidence in the record which supports the

removal decision. (E.g., *In re Diamond H*. (2000) 82 Cal.App.4th 1127, 1137; *In re Basilio T*. (1992) 4 Cal.App.4th 155, 171–172; *In re Jason L*. (1990) 222 Cal.App.3d 1206, 1218–1219.)

" 'A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] "The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child." [Citation.] The court may consider a parent's past conduct as well as present circumstances.' " (*In re A.S., supra*, 202 Cal.App.4th 237, 247.)

The record has ample evidence to support the juvenile court's findings.

As is evident from the sustained allegations quoted above, neither appellant nor her daughter are strangers to the dependency system attempting to deal with mental health issues. Indeed, the primary allegation of 2011 commencing the initial dependency had language which almost mirrors that used in the later petition. The services and therapy provided appellant in connection with the previous dependency clearly did not succeed in permanently changing appellant's behavior.

Once the initial dependency ended, Brooklyn's difficulties advanced to the point where she brandished a kitchen knife at her sister, and told a social worker that she wanted to kill her sister. The matter was deemed sufficiently serious that Brooklyn was temporarily committed for observation pursuant to Welfare and Institutions Code section 5150 to determine if she was a danger to herself or others. According to the caseworker, "Ms. S[.] told Brooklyn she hoped the tests proved she needed to stay in the hospital, saying she needed help." When her daughter was ready to be released from the hospital, appellant refused to take her home, believing the daughter "was a danger to her family" and "a danger to herself."

According to the caseworker: "She [appellant] feels that the doctor . . . has not seen Brooklyn long enough to get a full picture of her. She [appellant] does not feel a proper evaluation was completed and that Brooklyn's therapist, Ashley Sung, agrees that

Brooklyn is a danger to herself and others, and not ready to be discharged . . . [¶] Ms. S[.] said if Brooklyn is released, Brooklyn said that she will kill Asia." Appellant told the caseworker that "Brooklyn takes thirteen (13) medications daily." Moreover, "Ms. S[.] said that she will pick up Brooklyn after a month, once she has been formally hospitalized, and is no longer a danger to herself . . . Brooklyn needs help and needs to be hospitalized . . . She said that Brooklyn wants to kill her sister and said that if she returns home, she would kill herself. Ms. S[.] said she knows that Brooklyn is a paranoid schizophrenic."

But therapist Sung, while admitting that Brooklyn's behavior was "deteriorating," reported to the caseworker that appellant "is not consistent with Brooklyn's medication appointments. She says that Ms. S[.] is 'always late' and is not 'receiving the full benefits' of the appointment. Ms. Sung reported that Ms. S[.] comes to the appointment saying that Brooklyn is presenting with new symptoms, and asks for more medication." The caseworker concluded that appellant "continues inaccurate reporting of Brooklyn's mental health status."

In the initial report seeking Brooklyn's detention, the caseworker noted that appellant "has a significant history of substantiated general neglect allegations" and "refused to meet with the Department to develop a safety plan for Brooklyn's return home." The caseworker advised the court of "Pre-placement Preventive Services" dating back to 2005 which "were provided but were not effective in preventing or eliminating the need for removal of the child from the home." Four of the 13 offered services were "refused" by appellant.

The caseworker's final "Jurisdiction/Disposition Report" is a comprehensive document of 50 pages, not counting attachments, completed on May 21, 2014. In addition to the information in her detention report, the caseworker recounted a conversation with appellant on May 16 in which appellant still believed that Brooklyn was a " 'danger to herself and others.' " On May 2, the caseworker spoke with therapist Cynthia Weary, who reported "she has been trying to provide services to the family since January 2014, but that Ms. S[.] did not make herself available for services. She stated

Ms. S[.] was overwhelmed. Ms. Weary stated she made several efforts to offer intensive services to Ms. S[.], but Ms. S[.] did not engage."

Appellant is not currently employed, and her sole source of income is SSI. Appellant told the caseworker she "currently has PTSD . . . with depression and anxiety as well." Appellant is "currently prescribed" a number of anti-depressant medications. She believes "the only need her family has is for Brooklyn to have her mental health needs met." "Ms. S[.] stated, 'If a psychiatrist can guarantee that [Brooklyn] is safe to herself and others, then I will gladly take her back.' "

Therapist Sung told the caseworker "Ms. S[.] did not complete a parenting class or family therapy. She explained that she started family therapy, 'but Asia [the oldest child] has [a] high level of hatred for Brooklyn.' Ms. Sung suggested that visits between Asia and Brooklyn be in a therapeutic setting because Asia 'hates' Brooklyn. . . . She stated Ms. S[.] blames Brooklyn for family issues and stated that Brooklyn 'needs to be fixed.' Ms. Sung stated that Ms. S[.]'s way of 'fixing Brooklyn was by over medicating.' . . . [¶] Ms. Sung stated Ms. S[.] 'wants to put Brooklyn on a different medication each month.' Ms. Sung stated she is concerned that Ms. S[.] over medicated Brooklyn and described that Ms. S[.] was 'shopping for doctors.' [¶] . . . She stated Brooklyn seeks attention, attention she does not receive from Ms. S[.]"

The caseworker assessed appellant's situation as follows: "Ms. S[.] continues to inaccurately report Brooklyn's mental health status; wanting Brooklyn to remain hospitalized for an extended amount of time despite medical professionals indicating that she did not need to be, and the children continue to have poor school attendance, having missed the majority of the current school year. Ms. S[.] also continues a lack of supervision of her children as evidenced by allowing Asia and Brooklyn to be home alone despite Brooklyn making threats to kill Asia."

The caseworker advised the court that "[t]he Department's assessment is that the children would be at very high risk of abuse and/or neglect in the care of Ms. S[.] due to the following: [¶] Prior Child Welfare Service referrals [¶] Prior Child Welfare Services

and Court involvement [¶] Mental health needs of Brooklyn [¶] Ms. S[.]'s unmet mental health needs."

This, and Ms. Sung's evidence, would suffice as substantial evidence that matters had not been corrected to the point where it would be reasonably safe to put Brooklyn and Asia together in appellant's custody. And, as the preceding discussion demonstrates, there is ample additional evidence reinforcing that conclusion. Thus, any error was harmless. (Cal. Const., art VI, § 13; *In re Jason L.*, *supra*, 222 Cal.App.3d 1206, 1218.)

The dispositional order is affirmed.

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Richman, J.

We concur:

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Kline, P.J.

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Miller, J.